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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,678	10/06/2003	Duane M. Horton	83843	5327

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Office of Counsel
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EXAMINER

VASUDEVA, AJAY

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/679,678	Applicant(s) HORTON, DUANE M.	
	Examiner Ajay Vasudeva	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 14-20 is/are rejected.
- 7) ☐ Claim(s) 3-13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/6/2003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Niederer.

Niederer shows a body with a nose and a tail, and having a mast attached to the body. The mast has a rigid lower mast section [22] mechanically attached to the body, and an upper mast section [23] that is extendable from the lower mast section. A motor [58] with controller (see figure 6a) is in mechanical connection with the mast for initiating the extension of the mast from the tow body. (see col. 3, lines 2-5; col. 10, lines 36-44; and col. 11, lines 28-37).

The body is capable of being towed if required, and therefore, is considered as “suitable for towing”, as set forth by the applicant in claim 1.

The limitation “an upper mast section being extendable from the lower mast section” has been broadly interpreted as the upper mast section as merely being an extension of the lower mast section, and not necessarily as being movably or retractably extensible. (emphasis provided)

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3. Claims 1, 2 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Helmore.

Helmore shows a body with a nose and a tail, and having a mast [12] attached to the body. The mast has a rigid lower mast section mechanically attached to the body, and an upper mast section that forms an extension of the lower mast section, and is therefore considered extendable from the lower mast section. A motor [26] with controller [30] is in mechanical connection with the mast for initiating the extension of the mast from the tow body. A pressure sensor [8] initiates the extension of the mast.

The body comprises components which can be detected by radar.

The body is capable of being towed if required, and therefore, is considered as "suitable for towing", as set forth by the applicant in claim 1.

4. Claims 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rebikoff.

Rebikoff shows a body [2] with a nose and a tail, and having a mast [15] attached to the body. The mast has a rigid lower mast section mechanically attached to the body, and an upper mast section that is retractably extendable from the lower mast section.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 2 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niederer in view of Daggett.

Niederer shows a body with an extensible mast controlled by a motor, as above.

Niederer does not show a controller that initiates the extension of the mast in response to a depth indication by a pressure sensor, but refers to Daggett (US 3106712) for such details.

Daggett shows a controller initiating the extension of the mast in response to a depth indication by a pressure sensor (col. 2, lines 13-19).

It would have been obvious for one skilled in the art at the time of the invention to have configured the controller of Niederer to initiate the extension of the mast in response to a depth indication by a pressure sensor, as taught by Daggett. Having such an arrangement would have been advantageous as it would have provided an automated system that would operate without human intervention, and therefore would have precluded problems resulting from human error.

Allowable Subject Matter

7. Claims 3-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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- Kruger et al., Ambs, Wallin, Gertler et al., Yoshikawa et al., Kato, Lombardi (047 and 046), Salmon, Boswell et al., Hopkins, Hammond Jr. and DE (051) show devices that can be used as decoys.
- Wynn Jr. shows a submarine towing system.

Examiner's Observations: In claim 1, the applicant recites a limitation "suitable for towing". Applicant may note that all submarines are considered suitable for towing.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992. The examiner can normally be reached on Monday-Friday 1:00 pm--5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AV

Ajay Vasudeva
Examiner
Art Unit 3617



S. JOSEPH MORANO
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